



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 26, 1996

Ms. Inez VanderBurg  
Attorney, Legal Services  
Texas Department of Mental Health  
and Mental Retardation  
P. O. Box 12668  
Austin, Texas 78711-2668

OR96-2247

Dear Ms. VanderBurg:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 37221.

The Texas Department of Mental Health and Mental Retardation (the "department") received a request for information concerning the Quality Living Study. You assert that a handwritten letter, dated September 12, 1994, containing client identifying information and responsive documents that include computer generated lists of client names, patient numbers, social security numbers, and addresses are excepted from disclosure under section 552.101 of the Government Code in conjunction with the confidentiality provisions of the Health and Safety Code, sections 611.002(a) and 576.005(a), and title 25, section 403.291 of the Texas Administrative Code. In addition, you contend that the requested information is also confidential pursuant to constitutional and common-law privacy rights. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from required public disclosure information that is confidential by law. Section 576.005(a) of the Health and Safety Code provides as follows:

(a) Records of a mental health facility that directly or indirectly identify a present, former or proposed patient are confidential unless disclosure is permitted by other state law.

By its terms, this provision is limited in its application to only the records of a mental health facility. The representative sample of records<sup>1</sup> you have submitted falls within the scope of

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<sup>1</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

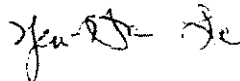
section 576.005(a), and therefore, is excepted from required public disclosure. However, we are unable to discern whether the handwritten letter, on its face, is a record of a mental health facility. If indeed it is, then the letter is confidential and may be withheld. If the letter is not deemed confidential under section 576.005(a), you may still withhold the patients' names based on the common-law right to privacy.

Section 552.101 excepts from required public disclosure information considered to be confidential by law, including information made confidential by judicial decision. This exception applies to information made confidential by the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.* Information about a person's emotional or mental distress is a highly intimate fact about that person that the public has no legitimate interest in. *See* Open Records Decision No. 343 (1982). We agree that the patients' names in the handwritten letter are protected from required public disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.

Because our determination under section 576.005(a) and the common-law right to privacy is dispositive, we need not address the department's other claims of exemption from public disclosure.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/rho

Ref.: ID# 37221

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Enclosures: Submitted documents

cc: Ms. Evelyn Cherry  
2038 Millcreek  
Garland, Texas 75044  
(w/o enclosures)